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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,505	07/20/2001	Gilson Woo		4913

7590 11/10/2005

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EXAMINER

GILBERT, SAMUEL G

ART UNIT PAPER NUMBER

3735

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/909,505

Applicant(s)

WOO, GILSON

Examiner

Samuel G. Gilbert

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 16, 17 and 20-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 16, 17 and 20-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-12, 16, 17, and 20-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 - "said treatment region" line 10 lacks antecedent basis. Further, a single treatment area has not been set forth. The applicant has however set forth three treatment regions therefor it is unclear to the examiner which of the three treatment regions "said treatment region" is referring to further, in the applicant's response the applicant argues that "said treatment region" is directed to the total treatment region however a total treating region has not been set forth in the claim.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-12, 16, 17, and 20-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

"designating at least three treating regions of the trunk having a total size of about 1204 square inches, covering about 28"x 43" of a trunk region all the way around trunk, said treating region being divided into at least 3 sub-regions, according to shape of the trunk;"

On page 10 of the arguments from 5/19/2004, the applicant admits that this feature "three regions all the way around the trunk" was not in the specification or claims by mistake, lines 31-34. This was first introduced into the claims in an amendment of 3/17/2003.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-12, 16, 17 and 20-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lopez et al. (US 5720,046) in view of Woo (5,529,569).

Claims 1, 4, and 7-10 - Lopez et al. ('046) teach a method of treating and alleviating afflictions, ailments and diseases holistically by application of magnetism to a plurality of treating regions of the trunk. The method comprising designating a total treating region, in the embodiment of figure 12 the treatment region is the entire torso covered by the T-shirt, wherein said treating region

being divided into at least 3 sub-regions (see Figure 1 and column 5, lines 57-65), because the magnets are distributed evenly throughout the body of T-shirt the examiner is taking the subregions as shown in figure 1 to extend all the way around the torso; providing magnet means having at least one north pole surface adapted for application to the plurality of treating regions of the trunk; applying a north pole surface of a magnet to at least one of a plurality of treating regions of the trunk (see Figure 12 and column 8, lines 8-19 and 54-61); maintaining the magnets in contact with at least one of the treating regions of the trunk by using a proper band, wrapper or cover with magnets sewn-in or encased in any shape of form appropriate to fit the treating regions of the trunk of a person (see abstract and column 8, lines 7-18); However, the total flux and period for applying the magnets have not been set forth.

Woo teaches applying a total magnetic flux to the treatment region of between 5000 to about 250,000 total flux, column 2, lines 63-65. Further, a treatment period of between 20 minutes to about 3 hours is set forth, column 7 lines 63 and 64. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the treatment regimen set forth in Woo with the apparatus of Lopez to gain the advantage of providing direct relief of the ailments set forth in the table in column 6 of Woo.

While wearing the T-shirt the magnets are applied concurrently.

Claims 5 and 6 – as a T-shirt is pulled on over the head the magnets would be applied to region A, followed by region B and finally region C.

Claim 9 – after the T-shirt is on the magnets are applied concurrently.

Claim 10 – the magnets are applied partially to at least one of the treatment regions.

Claim 11 – the magnets are applied partially to at least a plurality of treatment regions concurrently.

Claim 12 – the magnets are applied partially to all of treatment regions concurrently.

Claim 16 – because the magnets are distributed evenly, column 8 lines 10 and 11 the flux in each region would be substantially equal.

Claim 17 – because the magnets are distributed evenly, column 8 lines 10 and 11 the flux in each area of each region would be substantially equal.

Claims 20-22 – the magnets of Lopez et al are equally spaced in horizontal rows around the T-shirt and therefore would treat the body as claimed.

Claim 23 – the examiner is taking each row after the selection of a first row as an additional row of magnets having the same total flux.

Claim 24 – the method set forth by Woo uses treatment intervals of equal time periods.

Claims 25-27 - Lopez uses the north pole of the magnets and the array of magnets in figure 12 covers substantially the entire treatment region as claimed.

Claims 28 and 29 - the T-shirt maintains the magnets in contact with the treatment region.

Claim 30 – The T-shirt places the magnets such that they are in direct contact with the treatment regions of interest. The claim further indicates that the magnets are sewn-in or encased in any appropriate form. As shown in figure 24 of Lopez the magnets are sewn in or encased in the material of the devices of Lopez.

Claim 31 - the T-shirt is a cover.

Claim 32 – Lopez also teaches head and neck magnets, see figures 16a-c and 19a

Claim 2 and 3 - Lopez does not set forth multiple treatments or treatment intervals. Woo teaches that the treatment is repeated between two and four times a day spaced by intervals of three to five hours. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the multiple treatment sessions set forth in Woo with the apparatus of Lopez to gain the advantage of providing direct relief of the ailments set forth in the table in column 6 of Woo.

Response to Arguments

The applicant argues that the regions set forth in Lopez are for a different treating purpose than the applicant's treatment regions. It is the examiner's position that the treatment regions read on the treatment regions set forth in the applicant's claims even though they are intended to be used in with a different intended treatment.

On page 11 the applicant argues that there is no descriptive phrase of "providing magnet means having at least one North Pole surface adapted for application to the plurality of treating regions of the trunk". The examiner disagrees. It was previously pointed out to the applicant in the description of Figure 12 that all the magnets had the same polarity directed inward the polarity being either P1 or P2, In the description of Figure 20, P2 is defined as being the North polarity, therefore the T-shirt of Lopez has a plurality of magnets having the North pole facing inward.

On page 12 the applicant argues that the magnets of Lopez are not directly contacting the treatment regions or in direct contact with the skin. It is the examiners position that the claims do not require magnets in direct contact with the skin of the patient. Further the claim calls for magnets sewn in or encased in any form appropriate to fit the treatment regions. It is the examiner's position that the magnets of Lopez are sewn in or encased in the T-shirt of Lopez.

On page 12, the applicant argues that the T-shirt of Lopez covers a plurality of treatment regions not on the trunk. The examiner would like to point out that the claims are written using comprising and therefore is open ended and does not preclude any additional treatment regions.

On pages 12 and 13 the applicant argues Lopez does not teach the claimed total flux, the claimed treatment period, equal treatment flux, and concurrently applying the flux. This argument is moot in view of the new grounds of rejection.

On page 13 the applicant argues the "balance concept of meridians". It is the examiner's position that because the magnets of Lopez are applied at equal spaced intervals around the trunk of the patient in the same manner as set forth by the applicant that the application of the T-shirt of Lopez would inherently bring the meridian system into balance.

On page 14 the applicant argues "two many accupoints are targeted" in Lopez. It is the examiner's position that because the magnets of Lopez are applied evenly around the torso in the same manner as in the applicant's invention that the same result would be achieved. Further the number of magnets to be used are not required in the applicants claims.

The second argument on page 14, the claims do not require the magnets to be in direct contact with the skin and the other arguments are moot in view of the new grounds of rejection.

On page 15, the applicant argues that the Lopez device is used to treat balance concept and that the applicant's invention is different because without direct contact of the magnets to the skin the exposure to a magnetic field does not provide any therapy. It is the examiner's position that the applicant's claims do not require direct contact of the magnets to the skin and that because the magnets are applied in the same manner to the same treatment regions even though for a different purpose would inherently provide the therapy claimed.

Regarding response 1, page 16. It is the examiner's position that the claims do not require direct skin contact by the magnets. The total flux is moot in view of the new grounds of rejection.

Regarding response 2, page 17. The applicant argues the meridian rules are not followed by Lopez. However, it is the examiner's position that the applicant's claims only require magnets in the treatment regions not in particular positions with respect to the meridians as argued.

Regarding response 3, page 17. The claims do not require direct contact of the skin by the magnets.

Regarding response 4, page 18. Lopez teaches two embodiments one using all North poles and one all south poles. When using all north poles no confusion results.

Regarding response 5, page 18. The magnets of the T-shirt of Lopez are in the treatment regions claimed by the applicant.

Regarding response 6, page 18. Only one type of pole is used at one time, see column 8 lines 8-19.

Regarding response 7, page 18. The claims do not require direct contact of the skin by the magnets.

The remaining arguments are moot in view of the new grounds of rejection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on 571-272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3735

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Samuel G. Gilbert
Primary Examiner
Art Unit 3735

sgg